stated above, I am of the view that the award was improper and illegal and together with the interest as levied and the costs as ordered has caused a miscarriage of justice. In my judgment, therefore, the plaintiff is only entitled to nominal damages for the 768 sq ft of encroachment.

Taking into consideration the circumstances in which the registrar's certificate came to be issued, such as how the amendment came to be made and the application of the wrong applicable law in making the award resulting in handing out for 'loss of bargain' in the sum of $65,328 because of the trespass over 768 sq ft of land, and in view of the circumstances of the whole case, I consider it to be a fit and proper case to be viewed as coming within the term of 'special circumstances' notwithstanding the delay in making the application. Taking into consideration the circumstances of the case, in my judgment $300 is reasonable as nominal damages. I therefore vary the certificate accordingly.

Application allowed.

Solicitors: *Ho, Chong & Menon; Yusuf Lee Pathma & Marbeck.*

Reported by *Teoh Ai Lin*

Muniandy Rengasamy & Ors v Indo Malaysia Engineering Co Bhd

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO D1-31-33-87
ANUAR J
4 JANUARY 1990

Companies and Corporations — Debts — Ranking of — Company placed under receivership — Plaintiffs' employment terminated — Whether termination benefits, pro rata bonus, leave pay and indemnity in lieu of notice are workers' compensation under Companies Act 1965 — Whether such claims rank in priority to debenture holders — Companies Act 1965, s 292(1)(c) — Employment Act 1955, s 69

Labour Law — Compensation — Whether compensation under Employment Act 1955 falls within s 292(1)(c) of Companies Act 1965 — Whether termination benefits, pro rata bonus, leave pay and indemnity in lieu of notice rank in priority to debenture holders — Employment Act 1955, s 69 — Companies Act 1965, s 292(1)(c)

The plaintiffs were employees of the defendant company, which was placed under receivership. The receivers terminated their services and the plaintiffs lodged a complaint to the Commissioner for Labour under s 69 of the Employment Act 1955 against the defendant company for non-payment of termination benefits, pro rata bonus, leave pay and indemnity in lieu of notice. The Commissioner for Labour ordered the defendant to pay the plaintiffs $1,778,795.79, being pro rata bonus, termination benefits, leave pay and indemnity in lieu of notice. The issue is whether such claims rank in priority over debenture holders under s 292(1)(c) of the Companies Act 1965.

Held, allowing the plaintiffs' application:

(1) The Companies Act 1965 is silent as to the provision of the order made by the Commissioner for Labour. However, s 292(1)(c) of the Companies Act 1965 provides that all amounts due in respect of workers' compensation accrued before the commencement of winding up shall be paid in priority to other unsecured debts.

(2) The words used in s 292(1)(c) are general and capable of wide interpretation, providing for 'workers' compensation under any written law relating to workers' compensation'. This leaves sufficient scope to include compensation under any written law. Compensation under s 69 of the Employment Act 1955 therefore falls under s 292(1)(c) of the Companies Act 1965.

[*Editorial Note*: The defendant's appeal to the Supreme Court vide Civil Appeal No 02-194 of 1989 was heard on 14 February 1990 by the court comprising Harun Hashim, Ajaib Singh and Jemuri Sarjan SCJJ. Judgment was reserved.]

Legislation referred to
Companies Act 1965 ss 191, 292(1)(A), 292(1)(c)
Employment Act 1955 s 69

MS Murthi for the plaintiffs.
Peh Lee Kheng for the defendants.

Cur Adv Vult

Anuar J: This is an application (encl 1) by the plaintiffs by way of originating summons for an order for:

(a) A declaration that, subject to s 191 read with s 292(1)A of the Companies Act 1965, all amounts due to the plaintiffs from Indo Malaysia Engineering Co Bhd, being pro rata bonus, termination benefits, leave pay and indemnity in lieu of notice amounting to M$1,778,795.79, rank prior to the debenture holders.

(b) In the alternative, a declaration that the order made on 4 September 1986 by the Commissioner for Labour, Port Klang ordering Indo Malaysia Engineering Co Bhd to pay the plaintiffs a sum of M$1,778,795.79 being pro rata bonus, termination benefits, leave pay and indemnity in lieu of notice, ranks prior to the debenture holders subject to s 191 read with s 292(1) A of the Companies Act 1965.

The plaintiffs were the employees of the defendant company. On 11 July 1986, the United Asian Bank Bhd appointed Mr Chua Teong Hooi and Raja Arshad bin Raja Tun Uda as receivers of the defendant company. The receivers terminated the services of the plaintiffs on 11 July 1986. The plaintiffs lodged a complaint to the Commissioner for Labour under s 69 of the Employment Act 1955 against the defendant company for non-payment of termination benefits, pro rata bonus, leave pay and indemnity in lieu of notice. After an inquiry, the Commissioner for Labour ordered the defendant company to pay

the plaintiffs the sum of $1,778,795.79 being pro rata bonus, termination benefits, leave pay and indemnity in lieu of notice

In the ranking of certain debts to be paid out of the assets of the defendant company, the Companies Act 1965 is silent as to the position of the order made by the Commissioner for Labour. The question for determination here is whether the plaintiffs' claim ranks in priority over the debenture holders.

Under s 191 of the Companies Act 1965, it is provided that in the case where a receiver is appointed on behalf of the holders of any debenture of a company secured by a floating charge, debts which are preferential debts under s 292(3) or (5) in a winding up shall have priority over any claim for principal or interest in respect of the debentures and shall be paid out in the same priority as is prescribed in s 292(3) or (5) of the Companies Act 1965.

The plaintiffs' claim, in my view, falls under para (c) of s 292(1) of the Companies Act 1965. Under s 292(1)(c) of the Act, it is provided that all amounts due in respect of worker's compensation accrued before the commencement of the winding up shall be paid in priority to other unsecured debts. In relation to s 191 of the Act, such amount shall be paid in priority to debts to the debenture holders.

The question here is whether the termination benefits, pro rata bonus, leave pay and indemnity in lieu of notice are worker's compensation as provided under s 292(1)(c) of the Companies Act 1965.

The words used under para (c) of s 292(1) is general and capable of wide interpretation. It provides for 'worker's compensation under any written law relating to worker's compensation'. It does not refer to any particular Act. It does not for instance specifically refer to the Workmen's Compensation Act 1952. In my view, it leaves sufficient scope to include compensation under any other written law. In my view, compensation under s 69 of the Employment Act 1955 falls within the meaning of s 292(1)(c) of the Companies Act 1965.

For the reasons above, I would agree with the plaintiffs that the amount due to the plaintiffs from Indo Malaysia Engineering Co Bhd ranks prior to the debenture holders. I would therefore allow the plaintiffs' application as in prayer (a) with costs.

Application allowed.

Solicitors: *Murthi & Partners; Shearn Delamore & Co.*

Reported by *Zarinah Marican*

Hwang Chin Hor & Ors v Song Seng Sdn Bhd & Ors

HIGH COURT (IPOH) — COMPANIES WINDING UP NO 42-62-88
ABDUL MALEK J
27 DECEMBER 1989

Companies and Corporations — Winding up — Allegations of mismanagement of financial affairs of company — Appointment of interim receivers and managers sought — Principles applicable

The petitioners had commenced winding-up proceedings against the fifth respondent which was a company and applied for an order that interim receivers and managers be appointed in respect of the company until the hearing of the petition. It was contended for some of the petitioners that the immediate and pressing problem facing the company was that its funds were being siphoned off by the third and fourth respondents who were the executive deputy chairman and the finance director respectively of the company for the benefit of the first and second respondents which were companies of which they were also the executive directors. It was contended that a financial conflict of interest had arisen thereby and as a result the company's assets were in jeopardy. There was also an issue regarding the sums of $2,184,501 and $783,214 owing by the second respondent to the company. It was alleged by one of the petitioners that the company was unlikely to take steps to recover the sum of $2,184,501 as the board of directors of the company was dominated and controlled by the first, second, third and fourth respondents. The petitioners alleged that the third and fourth respondents would accelerate the depletion of the assets of the company pending the hearing of the petition.

Held, allowing the petitioners' application:

(1) Before the court can make an order for the appointment of an interim receiver, it must be satisfied that the plaintiff has established a good prima facie claim to title, that the property was in jeopardy, and, at the very least, that the party applying would be in a worse situation if the appointment of the receiver was delayed. These three factors were present in the instant case.

(2) There was no reason for the respondents to be upset by the appointment of the interim receivers and managers who would only be there temporarily until the hearing of the petition to oversee the financial dealings of the company as a neutral third party.

[*Editorial Note*: The respondents' appeal to the Supreme Court vide Civil Appeal No 02-479 of 1989 was heard on 6 March 1990 and the court, comprising Hashim Yeop A Sani CJ (Malaya), Gunn Chit Tuan and Ajaib Singh SCJJ, dismissed the appeal.]

Cases referred to

1 *Federal Transport Service Co Ltd & Ors* v *Abdul Malik & Ors* [1973] 1 MLJ 216 (refd)
2 *Setapak Tin Syndicate Ltd & Anor* v *Choo Kim Peng* [1947] MLJ 174 (folld)

WSW Davidson (*Choo Cheng Lee* (*Miss*) with him) for the first to the fifth petitioners.
Chan Kok Keong for the sixth to the twenty-sixth petitioners.
Porres P Royan for the respondents.

Cur Adv Vult